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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8710 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DHOLASAN GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioner

Mr.A.J.Desai, Ld.Asstt.GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED BY DS for Respondent No.2 but none
appears

MR SD PATEL for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. This is an unusual petition, in the sense, that
the Gram Panchayat, Dholasan has come before this court
challenging the order passed by the Deputy Secretary,
Panchayats, Rural Housing Development and Rural

Development Department, whereby the Government in a Revision Application under section 259 of the Gujarat Panchayats Act, 1963 passed an order upholding the District Panchayat Appellate Committee's order, dated 5.12.1998 with regard to the removal of unauthorised encroachment made by the respondent No.3. At the same time, an order has also been passed directing the petitioner-Gram Panchayat, Dholasan that the encroachments of other 17 persons as mentioned in the list submitted by the Gram Panchayat, Dholasan shall be removed first, and thereafter only the encroachment of the respondent No.3 shall be removed.

2. Learned Advocate for the petitioner submitted that the notice to the respondent No.3 was issued on 21.4.1998 and the notices to other 17 persons for removing unauthorised encroachments were issued later on. Neither the date has been given in the pleadings nor is the learned Advocate for the petitioner in a position to give out such dates at the time of arguments. Petition was filed before this court against the order, dated 11.10.1999 passed by the Deputy Secretary, Panchayats, Housing Development & Urban Development on 2.11.1999 and when the matter came before the court on 3.11.1999 while issuing rule order to the following effect was passed:

"Rule. Till further orders there shall be ad-interim stay of the order, dated 11.10.1999 (Annexure"A") by which the revisional authority has imposed a condition on the petitioner-Gram Panchayat that only after removing encroachments made by 17 other persons the Gram Panchayat may remove the encroachment made by respondent No.3. It is further directed that the petitioner-Panchayat shall also take action against the other encroachers and state on affidavit in the present proceedings compliance about the said direction by 28.02.2000.

(M.S.SHAH,J)"

3. Compliance report has not been filed by the petitioner till date. However, Mr.Zaveri orally stated that the proceedings for removing the unauthorised encroachments of other 17 persons are in progress.

4. It is to be agreed at all hands that the petitioner-Gram Panchayat is within its right to remove the unauthorised encroachments, and such an action of removing the unauthorised encroachments when it was

subjected to appeal before the District Panchayat, the District Panchayat passed an order on 5.12.1998 rejecting the appeal of the encroacher-respondent No.3. In the revision application, the Deputy Secretary to the Government took the view that if at all the encroachment is to be removed, all the encroachers must be dealt with in the same manner, and their encroachments should also be removed. The idea was that there should not be any pick-and-choose by the body like the Gram Panchayat and it should not be that the respondent No.3 is removed and others are spared and protected. It appears that with this idea, the Deputy Secretary passed the order that the action for removing the unauthorised encroachments must also be taken against 17 other persons enlisted by the Gram Panchayat and thereafter the petitioner's encroachment is removed. The consideration which prevailed with the author of the order, dated 11.10.1999 is that had the action with regard to removing the unauthorised encroachments been initiated against the other encroachers when it was initiated against the respondent No.3, all the proceedings in other cases would also have been over as the same have been over in the case of respondent No.3. The author of the order, dated 11.10.1991 therefore invoked the ground of parity, or in other words, similar treatment to be given to similarly situated persons. The essence is that equals should be treated in equal manner or equals should not be treated in an unequal manner and parity must be maintained, and particularly, the bodies like Gram Panchayats, which are local self-bodies should not adopt the policy of pick-and-choose so as to allow number of persons to continue with unauthorised encroachment, and target only one of them. In fact, it is the statutory function of the Gram Panchayat to remove the unauthorised encroachments and in this regard no unauthorised encroacher is to be spared. While this court appreciates the idea with which the order dated 11.10.1991 has been passed, it is also found that the author of the order, dated 11.10.1999 was not wholly right when he directed that the encroachment made by the respondent No.3 must be removed only after removing the encroachments of other 17 persons. At the most, the direction should have been that the encroachments made by all the encroachers including the respondent No.3 may be removed simultaneously without observing any disparity in this regard. The learned Asst. Government Pleader appearing on behalf of respondent No.1 has no objection if the impugned order is modified to that extent so as to say that all the unauthorised encroachments shall be removed simultaneously. The learned advocate for the respondent No.3 also has no objection to this course of action being

followed.

5. Mr.K.S.Zaveri, Ld.advocate for the petitioner has submitted that so far as the petitioner is concerned, the proceedings have been concluded and in other cases only notices have been issued so far. Mr.Zaveri submitted that the Gram Panchayat will complete the proceedings against other 17 encroachers within a period of one month from today and thereafter all the encroachments of those who are found to have encroached shall be removed.

6. In this view of the matter, the impugned order, dated 11.10.1991 is hereby modified to the extent that all the encroachments shall be removed simultaneously and the part of the impugned order, i.e. that the other encroachments shall be removed only after removing the encroachment of the petitioner is hereby quashed and set aside. It is made clear that after the proceedings in all the 18 cases including the case of the respondent No.3 are over, the Gram Panchayat shall proceed to remove the unauthorised encroachments as promptly as possible, subject to any stay and/or final order which may be passed by any authority under the provisions of the Act or any court.

7. This Special Civil Application is allowed in the terms as aforesaid and the rule is made absolute accordingly. No order as to costs.

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